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OFFICE OF PETITIONS

In re Application of
David S. Gilbert
Application No. 09/809,709
Filed: March 15, 2001
Title: SLIDE LOCK WRENCH

DECISION ON PETITION

This is a decision on the "Petition for Revival of an Application for Patent Abandoned Unavoidably under 37 CFR 1.137(a)," filed December 22, 2003, which is properly considered as a petition to withdraw the holding of abandonment pursuant to § 1.181.

The petition under § 1.181 is **GRANTED**.

The above-identified application became abandoned for failure to file a timely and proper reply to the final Office action mailed December 13, 2002. This Office action set a shortened statutory period for reply of three (3) months from the mailing date of the action, with extensions of time obtainable pursuant to 37 CFR 1.136(a). An extension of time for response within the first month and extension fee were filed on January 8, 2003. However, no reply having been received and no additional extension of time made of record, the above-identified application became abandoned effective April 14, 2003. A Notice of Abandonment was mailed on December 15, 2003.

Petitioner promptly filed the instant petition (and petition fee under § 1.137(a)), asserting that the response was timely deposited in the "Express Mail" service of the USPS on April 9, 2003. In support thereof, petitioner submitted a copy of the response as petitioner maintains it was timely filed and a copy of the "Express Mail" mailing label used to transmit the response.

Preliminarily, petitioner is advised that pursuant to 37 CFR § 1.10(e), in order for correspondence, which was sent by the "Express Mail" service of the USPS, but was not received in the Office, to be considered timely filed by deposit in the "Express Mail" service of the United States Postal Service, "the number of the "Express Mail" mailing label must be placed on the paper(s) or fee(s) that constitute the correspondence prior to the original mailing by "Express Mail." A review of the correspondence reveals that petitioner did not write the "Express Mail" mailing label number on the relevant correspondence, and thus, he cannot rely on the provisions of 37 CFR 1.10 to establish timely filing.

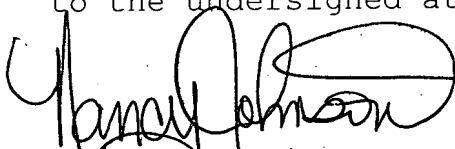
Fortunately, consideration of petitioner's evidence is unnecessary to render a decision in his favor. A review of the application file reveals that the response is present in the application file with a date of receipt of April 9, 2003 stamped thereon by the USPTO.

In view thereof, the response is considered timely filed, the Notice of Abandonment is VACATED and the holding of abandonment is hereby WITHDRAWN.

Since consideration of the petition under § 1.137(a) is unnecessary for the reasons cited, no petition fee is necessary.

The application file is being forwarded to Technology Center 3723 for consideration by the examiner of the amendment filed April 9, 2003. (Petitioner is advised that if the examiner determines that the amendment is not a proper reply to the final rejection, then the application will again be considered abandoned)

Telephone inquiries concerning this decision should be directed to the undersigned at (703) 305-0309.

A handwritten signature in black ink, appearing to read "Nancy Johnson", with a long horizontal line extending to the right.

Nancy Johnson
Senior Petitions Attorney
Office of Petitions